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No. 84-385

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

HONDA MOTOR COMPANY, LTD.,

Petitioner,

vs.

WALTER P. COONS,

Respondent.

RESPONDENT WALTER P. COONS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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RESTATEMENT OF QUESTION PRESENTED

I. Does the ruling by the New Jersey Supreme Court in *Coons II*—which accorded prospective application "across the board" to its judgment in *Coons I* invalidating the New Jersey tolling statute on Commerce Clause grounds—constitute an important public question mandating the grant of a writ of certiorari.

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STATEMENT OF THE CASE

A. *Factual and Procedural Background*

In the interest of brevity, respondent Walter P. Coons ("Coons") hereby incorporates by reference pages 8 through 10 of his Cross-Petition for a Writ of Certiorari. The factual and procedural background applicable to the cross-petition is in like manner pertinent to this response to the petition of Honda Motor Company, Ltd. ("Honda").[1]

B. *Summary of Opinion in Coons II*

In *Coons v. American Honda Motor Co.*, a decision reported at 94 N.J. 307, 463 A.2d 921 (1983) (*"Coons I"*) and authored by Justice Robert L. Clifford, the New Jersey Supreme Court held that the state tolling statute, *N.J.S.A.* 2A:14-22, was "a forced-licensure provision." Honda App. at 40a.[2] The court's holding was predicated on a narrow interpretation of the term "represented" as used in the statute—that corporations dealing exclusively in interstate commerce had to obtain a certificate to do business in order to gain the advantage of New Jersey statutes of limitation. Honda App. at 37a. By a 4-3 vote, a majority of the court concluded that the tolling statute violated the Commerce Clause. Honda App. at 40a. The majority opinion then went on to state:

> "This decision should be given retroactive effect, consistent with the general rule applied in civil cases that a new ruling shall apply to all matters

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1. The brief of respondent Attorney General of New Jersey also contains a pertinent procedural and factual history. See Brief of Attorney General of New Jersey In Opposition to Petition For a Writ of Certiorari at pages 1-5.

2. "Honda App. at 40a" refers to page 40 of Honda's Appendix to Petition for a Writ of Certiorari.

that have not reached final judgment. See *Fox v. Snow*, 6 N.J. 12, 14, 76 A.2d 877 (1950)." *Id.*

Coons filed a timely petition for rehearing asserting, *inter alia*, that the decision in *Coons I* should be applied prospectively, not retroactively. Honda App. at 3a-4a. Limiting its grant of the petition to that question, in a decision reported at 96 N.J. 419, 476 A.2d 763 (1984) ("*Coons II*") also authored by Justice Clifford, the New Jersey Supreme Court graciously acknowledged its earlier statement to apply *Coons I* retroactively was "ill-considered." Honda App. at 7a.

As part of its June 18, 1984 ruling in *Coons II* to accord prospectivity "across the board," the court held that the judgment in *Coons I* would be made effective as of August 3, 1983, the date that decision was rendered. Honda App. at 18. This meant, for example, that if a New Jersey litigant had a claim for personal injuries similar to that asserted by Coons against an unregistered foreign corporation such as Honda arising out of an accident that occurred before August 3, 1983, pursuant to the two year statute of limitations for such claims provided under *N.J.S.A.* 2A:14-2, his or her complaint had to be filed on or before August 3, 1985. Honda App. at 23a.

Before articulating the grounds for its decision in *Coons II*, the New Jersey Supreme Court discussed and analyzed the equitable principles employed when dealing with retroactivity problems in state and federal cases such as the following: *Salorio v. Glaser*, 93 N.J. 447, 461 A.2d 1100 (1983), cert. denied, 78 L.Ed.2d 682 (1983); *Oxford Consumer Discount Co. v. Stefanelli*, 104 N.J. Super. 512, 250 A.2d 593 (App. Div. 1969), modified, 55 N.J. 489, 262 A.2d 874 (1970), appeal dismissed, 400 U.S. 923, 27 L.Ed.2d 182 (1970); *Chevron Oil Co. v. Huson*, 404 U.S. 97, 30 L.Ed.2d 296 (1970); *Lemon v. Kurtzman*, 411 U.S. 192, 36 L.Ed.2d 151 (1973)

("Lemon II"); and *Wachovia Bank & Trust v. National Student Marketing*, 650 F.2d 342 (D.C. Cir. 1980). In the course of this analysis, Justice Clifford observed that the "balancing test" for dealing with retroactivity problems are perhaps "best typified" by this Court's opinions in *Chevron* and *Lemon II*. Honda App. at 9a.

Specifically addressing the argument made by Honda and its supporting corporate *amici* that "not to apply the ruling (in *Coons I*) would be to countenance unconstitutionality," Justice Clifford first made reference to the three factors enunciated in *Chevron* for dealing with retroactivity problems in civil actions and then responded:

> "But the argument overlooks the balancing of interests and impact, called for by our commitment to equitable principles. Those concerns are addressed above—the reliance of plaintiff and those similarly situated, and the absence of any showing that in fact defendant and corporate *amici* suffered a burden borne of a compulsion to register in New Jersey to permit recourse to the statute of limitations." Honda App. at 18a.

Turning to the issue of whether Honda, as the putative successful litigant—or any of its supporting corporate *amici* "as champions of the cause"—should be given the benefit of the ruling in *Coons I*, the majority in *Coons II* perceived "no injustice in limiting the operative time of *Coons I* to the date of that decision, August 3, 1983." *Id.*

Although acknowledging the pertinency of the argument made by Honda that "ordinarily the fruits of the struggle are awarded the successful litigant," a majority of the New Jersey Supreme Court found that according prospectivity "across the board" to the judgment in *Coons I* so as to allow Coons and associated *amici* an

opportunity to pursue their product liability claims in state court on the merits was justified on two express grounds. *First*, that the defendant unregistered foreign corporation and its supporting corporate *amici* were "institutional litigants" that would in the future "frequently" resort to and receive the benefit of New Jersey statutes of limitations. *Id. Second*, that "the hiatus effected by our conclusion in this regard affords the New Jersey Legislature an opportunity to address any public policy concerns that are implicated by *Coons I*."[3] Honda App. at 19a.

Justice Marie Garibaldi, after conceding that the judgment in *Coons I* met the first criteria of *Chevron* since it "amounted to a statement of first impression" which "established a new rule of law," Honda App. at 25a, disagreed with the majority's application of the second and third *Chevron* tests—stated as being whether retroactive application of a decision which establishes a new principle of law would further or retard the new rule and whether retroactive application would work an injustice upon those who had reasonably relied upon the old rule. Honda App. at 24a.

As to the second criterion, Justice Garibaldi stated that when a law cannot withstand a constitutional challenge, "only extraordinarily strong policy reasons (as

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3. The New Jersey Legislature did not take long to respond. Effective August 23, 1984, *N.J.S.A.* 2A:14-22 was amended to define the term "represented" so that a foreign corporation engaged solely in interstate commerce need not register to do business in New Jersey to obtain the benefit of that sovereign state's statutes of limitations. As the Accompanying Statement to Senate Bill No. 953 makes abundantly clear, the legislation was enacted to continue without interruption the procedural remedy New Jersey residents obtained by virtue of the tolling statute against often difficult to locate unrepresented foreign corporations. See Coon's Cross-Petition and Appendix For a Writ of Certiorari in Case No. 84-591 at pages 1a-2a.

present in *Salorio*) justify limiting the new rule to prospective application." Honda App. at 25a.

Applying the third *Chevron* criterion, the dissenter contended that the record of this case failed to indicate Coons or his associated *amici* placed actual reliance upon the tolling statute in not bringing suit prior to the expiration of applicable statutes of limitations. As to the respondent, Justice Garibaldi stated: "Plaintiff Coons brought suit against Honda as soon as he realized he had a cause of action." *Id.*

Justices Schreiber and Pollock joined in that part of the dissent which argued for the proposition that Honda as the putative successful litigant and its supporting corporate *amici* should have received the benefit of the ruling in *Coons I*. Honda App. at 20a-23a. The remaining two members of the court otherwise agreed with the majority in *Coons II* that the judgment in *Coons I* should be given prospective effect.

Honda filed a timely petition with the New Jersey Supreme Court seeking a stay of the prospectivity ruling in *Coons II* until a determination on its then forthcoming petition for a writ of certiorari. The court below responded with an order dated July 13, 1984 granting a temporary stay for the stated purpose of giving the petitioner sufficient time to seek a stay of judgment from this Court. On July 31, 1984, this Court denied Honda's petition for a stay of the judgment in *Coons II*.

C. *Issues Raised by Honda's Petition*

In its petition, Honda contends that *Coons II* raises at least four issues deserving of review by this Court. Listing them in the order presented they can be summarized as follows:

1. Whether, if left uncorrected, the New Jersey Supreme Court's statement that it relied on state law

when it decided to accord prospective application to *Coons I* provides a means for state courts to circumvent enforcement of federal constitutional rights. Honda Petition at 10-12.

2. Whether the prospectivity holding in *Coons II* has created a new and independent violation of the Commerce Clause in direct conflict with decisions of this Court recognized as controlling in *Coons I*. Honda Petition at 12-18.

3. Whether, assuming *arguendo* that the decision of the court below could be read as an attempt to govern its decision in *Coons I* by application of the *Chevron* "balancing test," it misapplied that case's criteria. Honda Petition at 18-24.

4. Whether the New Jersey Supreme Court may deny the benefit of the ruling in *Coons I* to Honda and its supporting corporate *amici* on the ground they are "institutional litigants." Honda Petition at 25-26.

In a footnote, Honda Petition at 20, Honda also suggested that an additional reason for granting review would be to clear up what it contended was a disagreement between members of this Court over the scope of the decision in *United States v. Johnson*, 457 U.S. 537, 73 L.Ed.2d 202 (1982). Cited as an example was what appeared to be conflicting opinions rendered in the criminal case of *Solem v. Stumes*, 79 L.Ed.2d 579 (1984), dealing with the "clear break" test.

The first three issues alleged by Honda to arise out of *Coons II* clearly overlap. The petitioner has seized upon and distorted the statement made by Justice Clifford in *Coons II* that "as a matter of state law" *Coons I* is to be applied prospectively. The fact remains, as the third issue identified by Honda appears to concede, that the New Jersey Supreme Court arrived at the judgment

in *Coons II* by careful application of equitable principles dealing with retroactivity problems drawn from decisions of this Court and other federal courts as well as its own state decisions. Honda App. at 7a.

Similarly, the fourth issue as identified by Honda takes out of context one phrase employed by the court to support its ruling that prospectivity would be accorded "across the board" so as to include the respondent and his associated *amici*. The public policy considerations which caused the New Jersey Supreme Court, "aided by full briefing and argument," Honda App. at 7a, to allow Coons and many other similarly situated persons a reasonable time subsequent to August 3, 1983 to file suit against the unregistered foreign corporate defendant and its supporting corporate *amici*, however, go far beyond the characterization of these persons as "institutional litigants."

Honda's argument that the court below failed to apply the "clear break" criteria for the establishment of a new rule of law, citing *United States v. Johnson*, 457 U.S. 537, 549-554, 73 L.Ed.2d 202, 213-217 (1982), is also totally misplaced. The decision in *Johnson* was made in the context of a criminal case as it was in *Solem v. Stumes*. However, the petitioner ignores the statement in *Johnson*, duly noted by Justice Clifford in *Coons II*, Honda App. at 15a, that "all questions of civil retroactivity continue to be governed by the standard enunciated in *Chevron* . . ." 457 U.S. at 562, 73 L.Ed.2d at 222-223. Accordingly, the question of the scope to be afforded the decision in *Johnson* is a non-issue and merits no further discussion in this brief.[4]

4. Although Coons expressed disagreement in his cross-petition with the New Jersey Supreme Court's ruling which invalidated the tolling statute on Commerce Clause grounds, for the purposes of this brief, the respondent—the same as any other New Jersey litigant—will consider himself bound by the judgment in *Coons I* as modified by the ruling on prospectivity in *Coons II*. See *Winters v. New York*, 333 U.S. 507, 514, 92 L.Ed. 840, 849 (1948).

ARGUMENT

The ruling of the New Jersey Supreme Court in Coons II *according prospective application "across the board" to its judgment in* Coons I *that the New Jersey tolling statute,* N.J.S.A. *2A:14-22, violates the Commerce Clause fails to raise any important public question mandating the grant of a writ of certiorari*

Honda, as the petitioner in this case, must convince this Court that the prospectivity ruling in Coons II falls within the category of those considerations which merit review on certiorari.[5] This principle was masterfully expressed by Justice Frankfurter in a critique of the predecessor to this Court's Rule 17 (then Rule 19):

> "A federal question raised by a petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants." (Citations omitted.) *Rice v. Sioux City Cemetery,* 349 U.S. 70, 74, 99 L.Ed. 897, 901 (1954).

This case is clearly a civil case. At least since 1971 this Court has consistently applied the criteria for retroactivity in civil cases set forth in *Chevron Oil Co. v. Huson,* 404 U.S. 97, 30 L.Ed.2d 296 (1971). So did the New Jersey Supreme Court in *Coons II.* Honda App. at 9a-10a. It is equally beyond dispute that the federal constitution has no voice upon the subject of retroactivity. *Great Northern Railroad Co. v. Sunburst Oil &*

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5. See Supreme Court Rule 17 entitled "Considerations Governing Review of Certiorari."

Refining Co., 287 U.S. 358, 364, 77 L.Ed. 360, 366 (1932) (J. Cardozo); *United States v. Johnson*, 457 U.S. 537, 542, 73 L.Ed.2d 203, 208 (1982).

As authority for its ruling to afford prospective application to the judgment in *Coons I* which invalidated a state statute on constitutional grounds, New Jersey's highest court cited as authority this Court's decision in *Lemon v. Kurtzman*, 411 U.S. 192, 36 L.Ed.2d 151 (1973) ("Lemon II"). Honda App. at 10a-11a. In *Lemon v. Kurtzman*, 403 U.S. 602, 29 L.Ed.2d 745 (1971) ("*Lemon I*"), this Court had held unconstitutional a Pennsylvania statute under which the Commonwealth of Pennsylvania reimbursed private sectarian schools for designated secular educational service. Issues then arose with respect to reimbursement of funds previously paid. On remand, the district court permitted the Commonwealth to pay the schools for services rendered before the Supreme Court's decision in *Lemon I*.

Affirming the judgment of the district court, Chief Justice Burger authored an opinion in *Lemon II* which stated in pertinent part that retroactivity depended upon a consideration of particular relations between and the conduct of the parties, rights that had vested, of status, of prior determinations deemed to have finality, and of public policy. 411 U.S. at 199, 36 L.Ed.2d at 160. As duly noted by Justice Clifford for the court below, Honda App. at 10a-11a, this Court in *Lemon II* stressed the fact that "statutory or even judge-made rules of law are hard facts on which people must rely in making decisions and shaping their conduct." *Id.* Concluding his discussion, Justice Burger observed that equitable remedies touching upon retroactivity questions "are a special blend of what is necessary, what is fair and what is workable." 411 U.S. at 200, 36 L.Ed.2d at 161.

Only after an analysis of *Chevron*, *Lemon II* and another clearly applicable federal case, *Wachovia Bank & Trust Co. v. National Student Marketing*, 650 F.2d 342 (D.C. Cir. 1980)—the latter holding that *Chevron* mandates nonretroactive application of statute of limitation decisions that overrule the weight of past precedent—Justice Clifford turned to state decisions dealing with the retroactivity question such as *Oxford Consumer Discount Co. v. Stefanelli*, 104 N.J. Super. 512, 250 A.2d 593 (App. Div. 1969), modified, 55 N.J. 489, 262 A.2d 874 (1970), appeal dismissed, 400 U.S. 923, 27 L.Ed.2d 182 (1970), a decision characterized by the majority opinion as one that "anticipated the *Chevron* and *Lemon II* analysis at least to the extent of its heavy emphasis on the element of reliance."[6] Honda App. at 11a.

To be sure, the majority opinion discusses state cases which applied *Chevron* or equitable principles similar to those enunciated in that seminal case which held for prospective application of decisions establishing new rules of law. The case given the most extensive consideration was *Salorio v. Glaser*, 93 N.J. 447, 461 A.2d 1100 (1983), cert. denied, 78 L.Ed.2d 682 (1983). That case in turn predicated its prospectivity ruling on this Court's decision in *Lemon II*. The June 8, 1983 ruling in *Salorio*, as in *Coons II*, also did not immediately enjoin all unconstitutional conduct of the state in reliance on the New Jersey Emergency Transportation Tax Act, *N.J.S.A.* 54:8A-1 *et seq.* Instead, its effective date was established

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6. The decision in *Oxford Consumer Discount Co. v. Stefanelli* is particularly instructive for the test established by Appellate Judge (later acting Justice) Milton B. Conford for the existence of reliance by laymen on prior law. As formulated by Judge Conford, that test was what legal counsel of average competence would have advised a client about the status of the law at the time the cause of action arose. 104 N.J. Super. at 523; 250 A.2d at 599.

as January 1, 1984, a date which would "coordinate with the fiscal year of most individuals" and which would minimize "bookkeeping or related problems" for employers and employees. 93 N.J. at 468; 461 A.2d at 1111.

Having identified the relevant state and federal authority on which the majority opinion would predicate its judgment, *Coons II* applied what was styled "the *Chevron-Salorio* formulation" to the specific facts of this case to reach a determination that prospectivity should be accorded "across the board":

> "It is clear that *Coons I* satisfied the *Chevron-Salorio* formulation of how the requirement of establishing a new principle of law may be met. We must look to the law as it was at the time plaintiff contemplated starting suit, namely, 1978. See *Wachovia Bank & Trust v. National Student Mktg., supra*, 650 F.2d at 347. It had been on the books since 1949, see *Coons I, supra*, 94 N.J. at 313 [463 A.2d at 925], and a tolling provision in some form had been a fixture of our law for over a century and a half, its origins being traceable to 1820, see *Lemke v. Bailey*, 41 N.J. 295, 298 [196 A.2d 523, 524] (1963). . .
>
> Turning to the critically important factor of reliance, we focus at the outset on which it is that litigants 'may have relied' on in 1978—a long standing statute that announces that as to foreign, unrepresented corporations, no action need be taken . . .
>
> (W)e conclude that given the nature of this statute, we are justified in presuming that because of the tolling feature, many suits may not have been brought against unrepresented foreign corporations. The foreign corporations did not take any action to avoid whatever vulnerability the enact-

> ment created; they did not register in New Jersey. *The history of non-action by both those corporations and potential plaintiffs satisfies us that participants in the events before us ordered their affairs in accordance with the tolling statute. . .*
>
> Some level of generality is required. The result we achieve satisfies that need while at the same time honoring the equitable considerations that must inform our decision." (Emphasis added.) Honda App. at 15a-18a.

The decision of the New Jersey Supreme Court to accord prospectivity to its judgment in *Coons I* so as to allow the respondent and his associated *amici* their day in court is not an exception to the general rule that "champions of the cause" should be awarded for their effort and expense in challenging existing law.[7] As the majority opinion perceptively observed, Honda and its supporting corporate *amici* are institutional litigants. This designation gives recognition to the fact that this case is not the only products liability suit they will have to defend in a New Jersey court. Unless extraordinary care is taken to improve their products, future New Jersey litigants will receive personal injuries as a proximate

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7. While Justice Clifford acknowledged that *amici* G.D. Searle and Kelsey-Hayes had originated the prevailing theory in *Coons I* and *amicus* Brinco Mining Limited "has with great tenacity and persistence espoused the cause (of constitutional invalidity on Commerce Clause grounds)," Honda App. at 18a, the fact remains that Honda never raised the Commerce Clause issue until directed to do so by the New Jersey Appellate Division after remand by this Court for further proceedings in light of the decision in *G.D. Searle & Co. v. Cohn*, 455 U.S. 404, 71 L.Ed.2d 250 (1982). This was acknowledged by Honda in the initial brief it filed with the Appellate Division in this case: "(I)t is respectfully submitted by appellant that the failure to raise the (Commerce Clause) issue prior to remand has no bearing on the issues now to be decided as such resolution has evidently been mandate(d)." Honda Brief on Remand at 3.

cause of product defects these institutional litigants place in the stream of interstate commerce. Notwithstanding, as a direct result of the decision by the court below in *Coons II*, commencing August 3, 1985 all such often difficult to locate unrepresented foreign corporations—assuming that *N.J.S.A.* 2A:14-22 had not been amended—would have had the benefit of a statute of limitations defense without being "burdened" by any requirement to register to do business in the State of New Jersey.

There is good precedent in federal case law for rulings which permit the plaintiff and similarly situated persons to proceed to judgment notwithstanding the success of the defendant in changing applicable law. This is particularly the case where, as in *Coons I*, the decision effectively shortens the applicable statute of limitations:[8] See *Jackson v. City of Bloomfield*, 731 F.2d 652, 655 (10th Cir. 1984) ("We will not bar plaintiffs' right to their day in court when their action was timely under the law in effect at the time their suit was commenced."); *Wachovia Bank & Trust v. National Student Marketing*, *supra*, 650 F.2d at 348 ("It would also produce the most 'substantial inequitable results' to hold that [appellants] 'slept on [their] rights' at a time when [they] could not have known the time limitation that the law imposed upon [them]," citing *Chevron*, 404 U.S. at 108, 30 L.Ed.2d at 306-307); see also *England v. Louisiana Medical Examiners*, 375 U.S. 411, 421-422, 11 L.Ed.2d 440,

8. There is venerable authority that strongly suggests that if the New Jersey Supreme Court in *Coons II* did not provide a fair and reasonable opportunity for New Jersey litigants to adjust to the new statute of limitations rule established by *Coons I*, its judgment in that case would have been unconstitutional. See *Sturges v. Crowninshield*, 4 Wheat 122, 207, 4 L.Ed. 529, 551 (1817) (C.J. Marshall); *Terry v. Anderson*, 95 U.S. 628, 632-633, 24 L.Ed. 365, 366 (1877) (C.J. Waite).

448-449 (1964) (holding that graduates of chiropractic schools would not be barred from litigating federal claims against the defendant state board of medical examiners in federal court although they were the plaintiffs in a case which established a new rule of law requiring specific preservation of a plaintiff's right to return to federal court when exhaustion of state remedies mandates prior litigation in state court.)

On closer examination, the decision of the majority in *Coons II* is totally consistent with the general rule that those who champion the cause should benefit by their efforts. It was Coons who filed the petition for rehearing which led to that decision. It was Coons who marshalled the resources of associated *amici* such as Karl Asch, Esq. and the Association of Trial Lawyers of America, New Jersey affiliate ("ATLA-NJ")[9] in support of prospective application of *Coons I* and who orally presented the argument for that cause before the court below. Would it not be ironic as well as unjust for other New Jersey litigants to receive the benefit of prospective application obtained by the judgment in *Coons II* while respondent Coons and his associated *amici*—the proponents and champions of that gracious ruling—are denied the same benefit.

What was described in the majority opinion as "public concerns that are implicated by *Coons I*," Honda App. at 19a, provides further support for according prospectivity "across the board." The decision in *Coons I*

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9. Mr. Asch filed a brief and presented oral argument in *Coons II*. Mr. Asch's law firm represents several hundred plaintiffs in various asbestos cases pending against institutional litigants such as Honda's supporting corporate *amicus* Brinco Mining Limited. The brief filed by ATLA-NJ was cited by the majority opinion in *Coons II* for that organization's concern that the court's ultimate decision on the prospectivity question would directly affect numerous New Jersey litigants. Honda App. at 4a.

turned on a highly technical and restrictive reading of the term "represented" requiring foreign corporations engaged exclusively in interstate commerce to register in order to obtain the benefit of a limitations defense. The "hiatus" spoken of in *Coons II* afforded the New Jersey legislature a fair opportunity—and one promptly acted upon—to clarify the term "represented" by an amendment of *N.J.S.A.* 2A:14-22.[10]

Since the question of what constitutes "representation" for the purposes of the New Jersey tolling statute has been resolved by a legislative act designed to correct the constitutional defect ruled upon in *Coons I*—assuming *arguendo* that there is any merit to Honda's contention it has been deprived of the fruits of its struggle—the petitioner and its supporting corporate *amici* are in circumstances analogous to the posture of the petitioner in *Rice v. Sioux City Cemetery, supra.*[11]

On rehearing, this Court became cognizant for the first time that the state of Iowa had enacted a statute which prohibited persons such as the defendant from including racially restrictive covenants in burial contracts. Based on this information, Justice Frankfurter,

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10. The enactment of amended *N.J.S.A.* 2A:14-22, however, should not foreclose review on certiorari of whether the New Jersey Supreme Court erred when it rendered the judgment in *Coons I.* In fact, reversal of that decision will serve to prevent future litigation over the recent amendment to *N.J.S.A.* 2A:14-22. It will also serve to demonstrate that application of Commerce Clause standards does have some limits when applied to statutes of limitation which have traditionally been deemed to be part of the *lex fori* or remedial procedures and court rules of every sovereign state. *Hawkins v. Barney's Lessee*, 5 Peters 457, 466-467, 8 L.Ed. 190, 193-194 (1831).

11. The petition filed by Honda on September 11, 1984 makes no reference to the fact that *N.J.S.A.* 2A:14-22 was amended on August 23, 1984 to include a definition of "represented" which was designed to correct the deficiency in the scope of that term found in *Coons I.* See footnote 3, *supra.*

speaking for the majority, held that the existence of that remedial Iowa statute merited reconsideration of whether the case was one in which there were special and important reasons for granting the writ of certiorari:

> "Had the statute been properly brought to our attention and the case thereby put into proper focus, the case would have assumed such isolated significance that it would hardly have been brought here in the first instance." (footnote omitted) *Rice v. Sioux City Cemetery, supra*, 349 U.S. at 76-77, 99 L.Ed. at 903.

Quoting Chief Justice Taft for the proposition that "it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from the parties", *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393, 67 L.Ed. 712, 714 (1923), this court dismissed the writ of certiorari in *Rice v. Sioux City Cemetery* as having been improvidently granted.

To sum up, the grounds advanced by Honda in its petition simply do not reach the standard for considerations governing review on certiorari announced by this Court in Rule 17 and applicable case law.[12] The majority opinion in *Coons II* heeds the admonition of this Court in *Lemon II* that when dealing with retroactivity problems what should be applied is a special equitable blend of "what is necessary, what is fair, and what is workable." Although the New Jersey Supreme Court in *Coons*

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12. To the extent that it may be appropriate to distinguish the cases of *New York v. Cathedral Academy*, 434 U.S. 125, 54 L.Ed.2d 346 (1977) and *United States v. U.S. Coin & Currency*, 401 U.S. 715, 28 L.Ed.2d 434 (1971) cited in Honda's petition, Coons hereby incorporates by reference the argument made by respondent Attorney General of New Jersey in its Brief in Opposition to Petition for a Writ of Certiorari at pages 15-28.

II makes ample and appropriate reference to state precedent, at the heart of its ruling to apply the judgment in *Coons I* prospectively is a reasoned application of federal equitable principles in the context of a constitutional challenge to a state statute in a civil case. Even with the capable aid of its supporting corporate *amici*, Honda Petition at 1, the defendant unregistered foreign corporation has failed to demonstrate the existence of a "real and embarrassing conflict of opinion and authority" in *Coons II* of the nature that mandates the grant of a writ of certiorari. *Layne & Bowler Corp. v. Western Well Works, supra,* 261 U.S. at 393, 67 L.Ed. at 714.

CONCLUSION

For the above stated reasons, as well as those advanced by respondent Attorney General of New Jersey in its separate submission, Coons respectfully submits that Honda's petition for certiorari should be denied.

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